

AGREEMENT
PROVIDING FOR IMPLEMENTATION
OF THE
ALAMEDA COUNTYWIDE CLEAN WATER PROGRAM

THIS AGREEMENT, is made and entered into by and between the ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a local public agency of the State of California; Zone 7 of ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a local public agency of the State of California; COUNTY OF ALAMEDA, a subdivision of the State of California; CITY OF ALAMEDA, a municipal corporation of the State of California; CITY OF ALBANY, a municipal corporation of the State of California; CITY OF BERKELEY, a municipal corporation of the State of California; CITY OF DUBLIN, a municipal corporation of the State of California; CITY OF EMERYVILLE, a municipal corporation of the State of California; CITY OF FREMONT, a municipal corporation of the State of California; CITY OF HAYWARD, a municipal corporation of the State of California; CITY OF LIVERMORE, a municipal corporation of the State of California; CITY OF NEWARK, a municipal corporation of the State of California; CITY OF OAKLAND, a municipal corporation of the State of California; CITY OF PIEDMONT, a municipal corporation of the State of California; CITY OF PLEASANTON, a municipal corporation of the State of California; CITY OF SAN LEANDRO, a municipal corporation of the State of California; and CITY OF UNION CITY, a municipal corporation of the State of California.

All of the above-mentioned entities are hereinafter collectively referred to as "PARTIES" or individually as "PARTY."

RECITALS:

- A. The Water Quality Control Plan for the San Francisco Bay Basin (hereinafter "Basin Plan"), adopted by the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter "Regional Water Board"), in implementation of the Federal Clean Water Act, and the Municipal Regional Stormwater NPDES Permit (hereinafter "NPDES Permit") required that the PARTIES develop a program to control the discharge of pollutants from urban runoff in the Alameda County area.
- B. In furtherance of their responsibilities pursuant to the Basin Plan and the applicable NPDES Permit, the PARTIES have previously entered into a series of agreements to jointly fund the costs of preparing an action plan to evaluate nonpoint source pollutants, monitor unidentified pollutants, and develop control measures to mitigate or reduce the discharge of pollutants. Collectively, the measures undertaken pursuant to the previous agreements and anticipated to continue pursuant to this Agreement and upon execution of this agreement henceforth shall continue to be known as the Alameda Countywide Clean Water Program (hereafter "the Program"). The Program contains elements that provide a general benefit to the PARTIES (such as monitoring, public education, staff training, program administration, etc.). In addition to the Program elements, each Party has the responsibility to implement permit requirements within its jurisdiction. Activities carried out by a Party may include but are not limited to municipal operations and maintenance, construction site inspections and enforcement, commercial and industrial inspection and enforcement, illicit and illegal connection inspections, and implementation of new development and redevelopment treatment requirements.
- C. In 1987 Congress added Section 402 (p) to the Federal Clean Water Act (CWA) (33 U.S.C. Section 1342 (p), which requires National Pollutant Discharge Elimination System Permits for

certain stormwater discharges from municipal separate storm sewer systems, stormwater discharges associated with industrial activity (including construction activity), and designated stormwater discharges, which are considered significant contributors of pollutants to waters of the United States.

- D. Previous agreements have been executed between the PARTIES for the administration of the Program, and it is the intention of the PARTIES that this Agreement supersedes all prior agreements. In and for the mutual interests of the PARTIES, the PARTIES desire to continue the Program and to enter into this Agreement for the purpose of ensuring continued participation, in terms of cost and administrative responsibilities, and to make certain updates and procedural revisions to facilitate implementation of the Program in compliance with the NPDES Permit.
- E. The Alameda County Flood Control and Water Conservation District (hereinafter “the District”) and Zone 7 of the Alameda County Flood Control and Water Conservation District (hereinafter “Zone 7”) are local public agencies of the State of California duly organized, existing and empowered to conserve water and to provide maintenance and flood control management of the water courses and have the authority to control the discharge of surface waters to their facilities. The County of Alameda and all the cities herein are political subdivisions of the State of California with authority to control the discharge of surface waters from their respective jurisdictions.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Alameda Countywide Clean Water Program

- 1.01 The Alameda Countywide Clean Water Program is hereby continued (hereinafter “the Program”) to assist the PARTIES to fulfill the requirements of NPDES Permit No. CAS612008 as it exists, may be modified, or may be reissued in the future (hereinafter “NPDES Permit”).
- 1.02 The Program is a collective effort and implementation of area-wide activities, designed to benefit all PARTIES.

Section 2. Management Committee

- 2.01 A Management Committee shall provide overall Program direction and coordination. The Management Committee shall review and adopt an annual budget.
- 2.02 The Management Committee may, as necessary, adopt and revise Bylaws for its governance.
- 2.03 The Management Committee shall consider NPDES Permit compliance, including benefit to a majority of the PARTIES, as a primary objective in approving Program tasks and corresponding budgets.
- 2.04 Management Committee members, and their alternates, shall be appointed by the City Manager or the equivalent of the respective PARTIES and a confirming letter sent to the Program Manager. The voting membership of the Management Committee shall consist of one designated voting representative from each PARTY. Alternate voting representatives may be appointed by each PARTY.
- 2.05 Each PARTY to this Agreement is assigned a “Proportional Vote” in proportion to the Cost Allocation in Exhibit A.

- 2.06 A quorum for the conduct of business by the Management Committee shall be a majority (50% plus one) of the voting PARTIES to the Agreement. The Proportional Vote allocated to a PARTY shall not be considered in the determination of a quorum.
- 2.07 The PARTIES shall continue to utilize the Program's preferred approach of achieving consensus to resolve issues and reach decisions and to rely on a simple majority vote (50% plus one) for all decisions requiring a vote, except for changes to the Agreement (including changes to the Cost Allocation) and approval of the Annual Budget. Approval of Annual Budgets require both an affirmative vote by a majority of the PARTIES and an affirmative vote by PARTIES representing more than 50% of the Proportional Votes. Changes to the Agreement require an affirmative vote by a majority of the PARTIES, an affirmative vote by PARTIES representing more than 50% of the Proportional Votes of the PARTIES, and the approval by the governing bodies of the PARTIES representing both a majority of the PARTIES and more than 50% of the Proportional Votes of the PARTIES.
- 2.08 Management Committee approval is required prior to any Program expenditure by the Fiscal Agent or any other PARTY to this Agreement.
- 2.09 Approval by the Management Committee of a motion to submit a report to the Regional Water Board or the State Water Board will be considered a submittal on behalf of all PARTIES unless a PARTY notifies the Management Committee in writing that it does not wish the report to be submitted on its behalf.

Section 3. Program Budget Cost Allocation

- 3.01 The PARTIES shall each pay a yearly contribution into a fund established for Program operations.. Each PARTY's contribution shall be based upon the cost allocation in Exhibit A. The cost allocation in Exhibit A shall remain in effect unless and until a revised cost allocation is adopted through an amendment to the Agreement.
- 3.02 Invoices for payment of Program cost allocations will be sent out by July 30 of each year. If payment has not been received by the Fiscal Agent by September 30, a notice of non-payment will be mailed to the PARTY. If payment has not been received within 60 days of the notice of non-payment, the PARTY will receive notice that their participation in the Program will be terminated effective 30 days from the notice of termination.

Section 4. Fiscal Agent

- 4.01 DISTRICT shall serve as the initial Fiscal Agent for the Program. If the District, or another Fiscal Agent, decides to relinquish the role of Fiscal Agent, the Fiscal Agent will notify the Management Committee prior to December 30 and will continue to act as Fiscal Agent until June 30 of the following year. In the event that the District or another Fiscal Agent withdraws from the Program or from providing Fiscal Agent services to the Program, the Management Committee will then select a willing PARTY as Fiscal Agent to serve commencing July 1.
- 4.02 If the Management Committee decides to select a new Fiscal Agent, the Management Committee will notify the Fiscal Agent prior to December 30th that another entity will become the new Fiscal Agent as of the following July 1st.
- 4.03 The Fiscal Agent shall be the treasurer of Program funds. The Fiscal Agent, in accordance with generally accepted accounting procedures, shall keep the Program funds segregated from any other funds administered by the Fiscal Agent; shall credit the Program with appropriate interest income earned on Program funds in each fiscal year; and shall not expend any funds except in

accordance with the annual budget approved by the Management Committee or as otherwise directed by the Management Committee.

- 4.04 The Fiscal Agent will provide a proper accounting of funds and reports of all receipts and disbursements. The Fiscal Agent shall execute contracts and process invoices in a timely manner. The Fiscal Agent may be reimbursed for reasonable expenses associated with oversight of Program accounts with the agreement of the Management Committee. In addition, a PARTY to this Agreement, pursuant to the direction of the Management Committee, may let and administer approved consultant contracts on behalf of the Program. Any PARTY to this Agreement who is administering a contract for the Program (Contracting Agent) shall be compensated for its services and/or contract costs as agreed to in advance by the Management Committee. All consultant contracts will contain hold harmless and indemnity provisions and insurance requirements for the benefit of all PARTIES.

Section 5 Program Management

- 5.01 The District shall serve as the initial Program Manager for the Program. If the District, or another Program Manager, decides to relinquish the role of Program Manager, the Program Manager will notify the Management Committee at least 90 days prior to their termination of Program Management services.
- 5.02 The Management Committee may select a willing PARTY or outside contractor to act as Program Manager. If the Management committee decides to select a new Program Manager, the Management Committee will notify the current Program Manager at least 90 days prior to the termination of the current Program Manager's services.
- 5.03 The Program Manager shall be responsible for Program management and administration, and technical program management in accordance with the PARTIES' NPDES Permit and as directed by the Management Committee. The Program Manager shall be paid from Program funds in accordance with the adopted Program budget.

Section 6. Duties of the PARTIES

- 6.01 In addition to the participation in the Management Committee, the PARTIES accept and agree to perform the following duties:
1. Each will authorize a representative to reapply for an NPDES Permit at the appropriate time as co-applicant with the other PARTIES;
 2. Each will comply with its applicable identified portion of Program implementation;
 3. Each will select a representative to participate in Management Committee meetings and other required meetings of the PARTIES as set forth in subsection 2.04 above;
 4. Each will fund and implement its share of the Program;
 5. Each has the responsibility to implement permit requirements within its jurisdiction.
- 6.02 This Agreement does not restrict the PARTIES from the ability to individually (or collectively) request NPDES Permit modifications and/or initiate NPDES Permit appeals or related actions relating to permit provisions to the extent that a provision affects an individual Party (or group of PARTIES).

Section 7. Term of Agreement

- 7.01 The term of this Agreement shall commence upon execution by the PARTIES and terminate on June 30, 2027. The cost allocation in Exhibit A shall become effective starting July 1, 2012, so that costs are allocated based on one amount for the fiscal year.
- 7.02 Any PARTY may terminate its participation in this Agreement by giving the Chair of the Management Committee at least ninety (90) days written notice. The terminating PARTY will bear the full responsibility for its compliance with the NPDES Permit commencing on the date it terminates its participation. Unless the termination is scheduled to be effective at the close of the fiscal year in which the notice is given, termination shall constitute forfeiture of all the terminating PARTY's share of the Program Budget, for the fiscal year in which the termination occurred (both paid and obligated but unpaid amounts). The Management Committee shall recalculate the cost allocations for the remaining PARTIES accordingly for the following fiscal year by the PARTIES without the withdrawing PARTY's participation.

Section 8. General Legal Provisions

- 8.01 This Agreement may be amended from time to time by an affirmative vote of the PARTIES and an affirmative vote of the governing bodies of the PARTIES as specified in Section 2.07..
- 8.02 This Agreement supersedes any and all prior agreement among all the PARTIES regarding the Program, but does not supersede any other agreements between any of the PARTIES.
- 8.03 This Agreement may be executed and delivered in any number of copies ("counterpart") by the PARTIES, including by means of facsimile. When each PARTY has signed and delivered at least one counterpart to the Program, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.
- 8.04 No PARTY shall, by entering into this Agreement, participating in the Management Committee, or agreeing to serve as Fiscal Agent, Contracting Agent and/or Program Manager assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of the NPDES Permit. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the United States Environmental Protection Agency, the State Water Resources Control Board, the Regional Water Board, and private non-governmental organizations, or any person acting on their behalf of in their stead.
- 8.05 It is understood and agreed that, pursuant to Government Code section 895.4, each PARTY ("indemnitor") shall, to the extent permitted by law, defend, indemnify and save harmless each other PARTY, and its officers, employees, volunteers, and contractors from all claims, suits or actions of every name, kind and description resulting from indemnitor's performance of this Agreement, excluding any injuries, death, damage or liability resulting from the gross negligence or willful misconduct of the other PARTIES or their officers or employees.

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EXHIBIT A

AGENCY	COST ALLOCATION
Alameda	4.42%
Alameda County	10.76%
Albany	1.85%
Berkeley	5.13%
Dublin	3.42%
Emeryville	1.69%
Fremont	14.03%
Hayward	10.14%
Livermore	6.09%
Newark	3.45%
Oakland	18.51%
Piedmont	1.80%
Pleasanton	5.64%
San Leandro	5.15%
Union City	5.31%
District	1.30%
Zone 7	1.30%
Total*	100%

* Sum equals 99.99% due to rounding.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement on the dates hereafter set forth.

COUNTY OF ALAMEDA, a political
subdivision of the State of California

By _____
President, Board of Supervisors

Date _____

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on _____, and that a copy has been delivered to the President as provided by Government Code Section 25103.

Attest: _____
Clerk, Board of Supervisors
Board of Supervisors, County
of Alameda, State of
California

APPROVED AS TO FORM:
DONNA ZIEGLER
County Counsel

By: _____
Deputy

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT,
a local public agency of the State of California

By _____
President, Board of Supervisors

Date _____

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the Alameda County Flood Control and Water Conservation District by a majority vote of the Board on _____, and that a copy has been delivered to the President as provided by Government Code Section 25103.

Attest: _____
Clerk, Board of Supervisors,
Alameda County Flood Control and
Water Conservation District

APPROVED AS TO FORM:
DONNA R. ZIEGLER
County Counsel

By: _____
Deputy

ZONE 7 OF ALAMEDA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT, a local public agency of the State
of California

By _____
Chair, Board of Directors

Date _____

APPROVED AS TO FORM:

Attorney

ATTEST: _____
Secretary, Board of Directors

CITY OF ALAMEDA, a municipal
corporation of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF ALBANY, a municipal corporation
of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF BERKEYLEY, a municipal
corporation of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF DUBLIN, a municipal corporation
of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF EMERYVILLE, a municipal
corporation of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF FREMONT, a municipal corporation
of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF HAYWARD, a municipal
corporation of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF LIVERMORE, a municipal
corporation of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF NEWARK, a municipal corporation
of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF OAKLAND, a municipal corporation
of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF PIEDMONT, a municipal
corporation of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF PLEASANTON, a municipal
corporation of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF SAN LEANDRO, a municipal
corporation of the State of California

By _____
City Manager

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____

CITY OF UNION CITY, a municipal
corporation of the State of California

By _____
Mayor

Date _____

APPROVED AS TO FORM:

City Attorney

ATTEST: _____